

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment

Repeal of Drinking Water Revolving Loan Fund
(LAC 33:IX.2201, 2205, 2207, 2209, 2211, and 2213) (WQ061)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to repeal the Water Quality regulations, LAC 33:IX.2201, 2205, 2207, 2209, 2211, and 2213 (Log #WQ061).

This rule repeals Chapter 22, Drinking Water Revolving Loan Fund, in the Water Quality regulations. The department no longer has the authority to administer the Drinking Water Revolving Loan Fund. Act 67 of the 2003 Regular Session of the Legislature transferred the administration of the fund from the Department of Environmental Quality to the Department of Health and Hospitals. The basis and rationale for this proposed rule are to remove language from the regulations that is no longer applicable.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on July 26, 2005, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ061. Such comments must be received no later than August 2, 2005, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs and Regulation Development Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ061. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Wilbert F. Jordan, Jr.
Assistant Secretary

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 22. Drinking Water Revolving Loan Fund - Repealed

§2201. Introduction

Repealed.

A. — ~~The Department of Health and Hospitals, Office of Public Health (OPH), is the state agency within Louisiana granted primary enforcement responsibility from the EPA to ensure that public drinking water systems within the state are in compliance with state regulations that are no less stringent than federal drinking water regulations adopted in accordance with the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.). The SDWA Amendments of 1996 authorized a state revolving loan fund program and grants to assist water systems in financing the costs of infrastructure improvements to achieve compliance with the SDWA.~~

B. — ~~In accordance with the Louisiana Constitution and authorizing legislation, the Department of Environmental Quality (the department) is assisting OPH in the financial administration of the Drinking Water Revolving Loan Fund (the fund). Regulations governing the fund program are promulgated by both OPH and the department.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:28 (January 1998), repealed by the Office of Environmental Assessment, LR 31:**.

§2203. Authority

Repealed.

A. — ~~These regulations provide for the Drinking Water Revolving Loan Fund as required by R.S. 30:2011 et seq. and in particular R.S. 30:2011(A)(3), (D)(1); 2074(A)(4), (B)(8); R.S. 40:2824(A); 2826(A), (B), (E), and (F).~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:28 (January 1998), repealed by the Office of Environmental Assessment, LR 31:**.

§2205. DefinitionsRepealed.

~~A.——The following terms used in these regulations shall have the following meanings.~~

~~*Administrative Fee*——the fee due from a borrower to the department at the origination of a loan and/or on the outstanding principal amount of a loan payable in installments at such rate or rates and at such time or times as may be established by the secretary.~~

~~*Applicant*——any person, as defined, that submits an application for financial assistance in accordance with these regulations.~~

~~*Binding Commitment Agreement*——an instrument evidencing a legal obligation by the department, acting on behalf of the state, to a person that sets forth terms for making a loan from the fund and/or providing such other financial assistance as may be authorized in connection with the program.~~

~~*Borrower*——any person receiving financial assistance for the construction of a drinking water facility.~~

~~*Completion Date*——the date the operation of a completed project receiving financial assistance from the fund is initiated or capable of being initiated, whichever is earlier.~~

~~*Construction*——includes preliminary planning, engineering, architectural, legal, fiscal, and economic investigations and/or studies, surveys, designs, plans, working drawings, specifications, erection, building, acquisition, alteration, remodeling, improvement, or extension of the project.~~

~~*Department*——the Louisiana Department of Environmental Quality.~~

~~*Drinking Water Facilities*——facilities for the purpose of collecting, transporting, treating, storing, distributing, or holding drinking water.~~

~~*Environmental Review*——an assessment by the department of the environmental impact of a proposed project and assurances that the project will comply with all environmental laws and executive orders applicable to the project area.~~

~~*Financial Assistance*——loans, credit enhancement devices, guarantees, pledges, interest rate swap agreements, linked deposit agreements, and other financial subsidies authorized by law.~~

~~*Fund*——the Drinking Water Revolving Loan Fund established by the department in accordance with the Safe Drinking Water Act (SDWA) Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature.~~

~~*Letter of Intent*——a written notification of the intent of the applicant to participate in the fund program. The notification must include a request for financial assistance, the estimated amount of financial assistance, and an estimated construction schedule and document the authority of the applicant.~~

~~*Loan or Loans*—a disbursement of money made by the department from the fund to a person in accordance with a loan and pledge agreement.~~

~~*Loan and Pledge Agreement*—a contractual arrangement by and between a person and the state acting by and through the department, providing for a loan or loans to such person for the purpose of paying the eligible cost of a project or projects.~~

~~*Operation, Maintenance, and Replacement (O, M, and R)*—those functions that result in expenditures during the useful life of the drinking water facilities for materials, labor, utilities, and other items that are necessary for managing and maintaining the drinking water facilities to achieve the capacity and performance for which such works were designed and constructed, including replacement.~~

~~*Person*—any individual, partnership, firm, corporation, company, cooperative, association, society, trust, or any other business unit or entity, including any municipality, or state agency.~~

~~*Project or Projects*—the activities or tasks identified in a loan and pledge agreement for which a person has made a loan and may expend, obligate, or commit loan proceeds.~~

~~*Secretary*—the secretary of the Department of Environmental Quality.~~

~~*State*—the state of Louisiana or any agency or instrumentality thereof.~~

~~*System Improvement Plan*—the necessary plans and studies relating to the construction of a complete project of drinking water facilities.~~

~~*User Charge*—a charge or fee levied on users of drinking water facilities for the cost of operation, maintenance, and replacement. User charges may include other costs such as the repayment of debt incurred for the construction of the drinking water facilities.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:28 (January 1998), repealed by the Office of Environmental Assessment, LR 31:**.

§2207. Eligibility for Participation

Repealed.

A.——~~Letter of Intent. An applicant shall send a letter of intent to the department and OPH.~~

B.——~~Eligible Projects. Financial assistance may be provided only for the construction of drinking water facilities as described in a system improvement plan approved by OPH. The department may consider criteria such as ownership, ability to repay, managerial capability, or other such criteria to determine the amount and type of financial assistance for a project.~~

C.——~~Allowable/Eligible Costs. Allowable cost determinations, based on~~

~~applicable law and regulations, may be made by OPH or the department, on a project by project basis.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:29 (January 1998), repealed by the Office of Environmental Assessment, LR 31:**.

§2209. Application Requirements and Loan Conditions

Repealed.

~~A.—— Limitation on Applications. An application shall only be funded after authorization from OPH and after meeting all of the department's requirements.~~

~~B.—— Application Package. The contents of the application package must contain all applicable information required by the department including, but not limited to, the following:~~

~~1.—— System Improvement Plan. The applicant will submit, through OPH, a system improvement plan consisting of those necessary plans and studies that directly relate to construction of drinking water facilities. The system improvement plan must contain enough information to allow the department to perform an environmental review.~~

~~2.—— Financial Information. The applicant is required to submit to the Office of Environmental Assessment, Environmental Technology Division sufficient information to demonstrate its legal, institutional, managerial, and financial capability to ensure the construction, operation, and maintenance of the drinking water facilities and repayment of the loan, interest, and administrative fees.~~

~~3.—— Site Certificate. The applicant must submit to the Office of Environmental Assessment, Environmental Technology Division a certificate executed by an attorney certifying that the applicant has acquired all property sites, easements, rights-of-way, or specific use permits necessary for construction, operation, and maintenance of the project described in the approved system improvement plan.~~

~~C.—— Loan Conditions. Loans for projects will be made only to eligible applicants that:~~

~~1.—— provide a fair and equitable user charge system that generates revenues sufficient to cover the costs of O, M, and R for the system;~~

~~2.—— agree to own, operate, and maintain the drinking water facilities so that such drinking water facilities will function properly as long as the loan and pledge agreement is in effect;~~

~~3.—— agree to properly maintain financial records, have periodic audits, and make these records available to the department, OPH, EPA, or their designees upon request;~~

~~4.—— commit to undertake the expenditure of loan proceeds for~~

~~construction or other eligible project costs within six months after entering into a binding commitment agreement or such time frame as may be required by the department, provided that failure to start the expenditure of funds within one year after entering into a binding commitment agreement may result in the withdrawal by the department of all financial assistance;~~

~~5. — agree to evidence the loan by a bond, note, or other form of evidence of indebtedness prescribed or approved by the department; and~~

~~6. — agree to pay administrative fees imposed by the department to defray long term administrative costs associated with the fund program.~~

~~D. — Loan Period. Loans shall be made for a period of time not to exceed 20 years from the completion date of the construction of a project, except for loans for projects for disadvantaged communities as defined by OPH that may have loan periods up to 30 years with approval of the department. Interim construction financing shall not exceed two years without written approval from the department and from OPH.~~

~~E. — Loan Repayment. Loan repayments of the principal, administrative fees, and interest installments will be set by the department, with the first installment due no later than one year following the project's completion date. The department will establish the loan repayment schedule in the terms of the loan and pledge agreement.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:29 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), repealed by the Office of Environmental Assessment, LR 31:**.

§2211. Events of Default and Remedies

Repealed.

~~A. — The provisions for events of default and remedies will be specified in the loan and pledge agreement for each borrower receiving a loan from the fund. The secretary or the undersecretary of the department must approve all remedies for events of default.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:30 (January 1998), repealed by the Office of Environmental Assessment, LR 31:**.

§2213. Miscellaneous

Repealed.

~~A. — The department may take certain actions and require a borrower to take~~

~~actions necessary to assure compliance by such borrower with requirements of the *Internal Revenue Code* of 1986, as amended, in connection with a loan from the fund. The borrower shall reimburse the department for any cost incurred by the department in connection with any such actions.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, Municipal Facilities Division, LR 24:30 (January 1998), repealed by the Office of Environmental Assessment, LR 31:**.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

LOG #: WQ061

Person

Preparing

Statement: Nicole HanoDept.: Environmental QualityPhone: (225) 219-3562Office: SecretaryReturn
Address: DEQ
P.O. Box 4314
Baton Rouge, LA 70821-4314Rule
Title: Repeal of Drinking Water Revolving
Loan Fund
(LAC 33:IX.2201; 2203; 2205;
2207; 2209; 2211; 2213)

Date Rule

Takes Effect: Upon Promulgation**SUMMARY**

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no expected implementation costs or savings to state or local governmental units by the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups by the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment by the proposed rule.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Wilbert F. Jordan, Jr., Assistant Secretary
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

LFO 03/09/2001

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This proposed rule will repeal Chapter 22, Drinking Water Revolving Loan Fund, of the Water Quality Regulations.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The Department of Environmental Quality no longer participates in the Drinking Water Revolving Loan Fund because the Department of Health and Hospitals has sole authority to administer the fund (Act 67 of the 2003 Regular Session of the Legislature).

- C. Compliance with Act 11 of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No increase in expenditure of funds is expected by the proposed rule.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

- (a) _____ Yes. If yes, attach documentation.
(b) _____ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED**

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 05-06	FY 06-07	FY 07-08
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR.			
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The proposed rule should not result in any increase or decrease in costs to implement the proposed action.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 05-06	FY 06-07	FY 07-08
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

This question is not applicable.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There will be no impact on local governmental units.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This does not apply.

FISCAL AND ECONOMIC IMPACT STATEMENT**WORKSHEET****II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS**

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 05-06	FY 06-07	FY 07-08
STATE GENERAL FUND _____			
AGENCY SELF-GENERATED _____			
RESTRICTED FUNDS* _____			
FEDERAL FUNDS _____			
LOCAL FUNDS _____			
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

This does not apply.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

This does not apply.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no impact on competition or employment in the public or private sector from the proposed action.